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Supreme Court, U.S.
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ALEXANDER L. STEVAS,
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No. 83-2129

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

BARBARA R. SCHREIBER,

Petitioner,

– against –

BURLINGTON NORTHERN, INC., R-H HOLDINGS CORPORATION, and THE EL PASO COMPANY, TRAVIS HUBERT PETTY, WILLIAM V. HOLIK, JR., M.R. ENGLER, JR., W.C. HENDERSON, R.S. MORRIS, M.A. EHRLICK, A.M. DERRICK, RICHARD L. MC CONN, D.J. MAC IVER, JR., and L.M. VAREN KAMP, HOWARD BOYD, WILLARD F. ROCKWELL, JR., W.D. NOEL, L. EMORY KATZENBACH, BEN F. LOVE, KENNETH RUSH, J.R. HUBBARD,

Respondents.

PETITIONER'S REPLY BRIEF

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Petitioner submits this reply brief to respondents' opposing brief to the petition for a writ of certiorari.

1. Respondents contend that the cancellation of the first tender offer by Burlington and its submission of an immediate new tender offer after favorable agreements to the insiders was not a manipulative device, since there were fifteen (15) days which elapsed between the cancellation and the new offer -- sufficient time for a new tender offeror to appear on the scene. The argument assume facts not in the record or considered either in the District Court or the Third Circuit. The complaint in the District Court alleged that the second tender offer was made immediately after the cancellation of the first and there was insufficient time for either the market, the class or a white knight to react freely.

The District Court and the Third Circuit did not consider whether or not the conduct was manipulative. The rationale of the decisions below was the Third Circuit's view that the Mobil decision resulted in an open ended notion

of manipulative acts. The Third Circuit particularly felt that the Mobil holding "...would transform all decisions by bidders or by target management that affect a tender offer contest into 'artificial' influences..." (A.7) Both the District Court and the Third Circuit held that deception was required before manipulation could be considered. Thus, neither Court considered whether or not the complained of activity was a manipulation. Indeed, the Third Circuit was quick to disclaim that its decision was an endorsement of respondents' conduct in this case. (A.8)

Even if one was to consider respondents' argument that the fifteen (15) days period offered by Burlington was sufficient to enable another bidder to appear defies reality. Fifteen days is patently insufficient to arrange for the millions of dollars of financing and the other necessary steps to make a tender offer. Moreover, Burlington had, under the new arrangements, an important option to acquire a significant block of stock from El Paso -- a situation which would certainly discourage any new offer. Petitioners should be allowed --

as plaintiffs were in Mobil -- the opportunity to demonstrate, with discovery and affidavits, a factual showing that manipulation did take place.

2. Respondents continue to assert that Section 10(b) considerations must be read into Section 14(e) considerations. For the reasons set forth in our main petition, we disagree and would urge that the teachings of Santa Fe Industries are not applicable in the Section 14(e) context present at bar.

Respectfully submitted,

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